HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.6067 of 1998

Dated 16th day of July, 2007

Between:

Geda Ademma ..
Petitioner

And

The Commissioner of Survey Settlements
and Land Records, A.P., Hyderabad
and three others ..
Respondents

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O R D E R:

This writ petition is filed to quash the order, dated 3.1.1998 passed by the 1st respondent-Commissioner of Survey, Settlements and Land Records, Hyderabad.

The petitioner asserts that her husband was the absolute owner and possessor of an extent of Ac.5.27 cents in R.S.No.73/1 covered by Patta Nos.7, 8 and 10 situated in Pragadapalli village, Polavaram Mandal, West Godavari District and after his death, she acquired title and possession of the property and has been in peaceful possession and enjoyment of it. While so, the 3rd respondent-Settlement Officer, *suo motu* issued a notice to the petitioner to attend an enquiry with regard to her possession of the property. When the petitioner claimed to be the successor of her husband's property, the 3rd respondent rejected her claim by an order, dated 31.8.1978. Aggrieved by this order, when the petitioner preferred an appeal, the 2nd respondent-Director of Settlements dismissed the appeal by an order, dated 6.7.1987. Questioning this order, the petitioner preferred second appeal before the 1st respondent-Commissioner of Survey, Settlements and Land Records. During its pendency, when the Special Deputy Tahsildar (Tribal Welfare) made a complaint against her under Section 3(2) (a) of A.P. Scheduled Area Land Transfer Regulation 1959 as amended by Regulation 1 1970 (for short "A.P.S.A.L.T. Regulation") seeking her eviction on the ground that she is a non-tribal, the Special Deputy Collector, after examining her evidence and records, dismissed the claim by his order dated 30.8.1991 holding that the land in question never belonged to tribals

and it has been in possession of non-triblas from 1916 onwards. Though the petitioner produced a copy of this order, the 1st respondent-Commissioner of Survey, Settlements and Land Records, without applying his mind, dismissed the second appeal by impugned order dated 3.1.1998.

A counter affidavit is filed wherein it is stated that the 1st respondent rightly rejected the petitioner's claim on the ground that she did not file any additional documentary evidence to establish her title as required under first proviso to Sections 7(10) and 9(1) of Regulation 2 of 1970.

Having heard the learned counsel for both the parties, this Court is of the view that the 1st respondent-Commissioner of Survey, Settlements and Land Records instead of deciding the issue by dismissing the second appeal ought to have remanded the matter to the Settlement Officer in view of the subsequent developments. The fact remains that a competent Special Deputy Collector gave a categorical finding that the land in question never belonged to any tribal, but it has been in possession of non-tribals from 1916 onwards. However, the 1st respondent, instead of remanding the matter, gave a finding that the Encumbrance Certificates filed before him cannot prove valid possession or induction without corroborative evidence. Hence, this Court is of the view that it is a matter wherein fresh enquiry is required to be conducted by the Settlement Officer to find out whether the petitioner is entitled for grant of ryothwari patta as contemplated under the A.P.S.A.L.T. Regulation.

In the result, the writ petition is allowed and the order dated 3.1.1998 passed by the 1st respondent- Commissioner of Survey Settlements and Land Records, is set aside and the matter is remanded to the 3rd respondent-Settlement Officer. The 3rd respondent is hereby directed to hold a fresh enquiry with regard to the

petitioner's entitlement for ryotwari patta in respect of the land in question. It is open for the petitioner to produce the entire relevant material including the order dated 30.8.1991 passed by the Special Deputy Collector in S.R.No.619 of 1990 before the 3rd respondent so as so enable him to conduct concrete enquiry into the matter. No costs.

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16.07.2007

bcj